

## **BlueStar Comments to ORMD Draft First Notice Rule**

**October 19, 2009**

BlueStar appreciates the opportunity to offer additional comments concerning the October 10, 2009 draft first notice rule (“DFNR”) prepared by the Office of Retail Market Development (“ORMD”). At this point in the development of the draft rules, BlueStar does not have any specific redline suggestions. Rather than addressing individual arguments once again, BlueStar will focus on significant issues that deserve serious attention and discussion.

ORMD should not view absence of a comment on any particular section as a lack of interest or position. BlueStar reserves the right to amend, revise or otherwise add to any comments and questions provided herein after further discussion and consideration.

### **Proper Administrative Code for New Rulemaking**

BlueStar has serious reservations about simply memorializing Staff’s proposed rule in a new Illinois Administrative Code Part 412 (“Code 412”). A thorough evaluation of existing rules must take place to determine whether a proposed rule already exists and therefore is unnecessary or conflicts with an existing rule. If such a conflict exists, then the conflict should be readily identified with supporting explanation for the suggested amendment or elimination of the existing rule.

Staff should evaluate why DFNR does not belong in existing Illinois Administrative Codes, such as Part 410, deftly entitled Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers. There are good reasons to incorporate

the proposed rules into existing codes rather than the creation of a new section. For example, Code 410 includes several customer protections. In particular, Section 410.40 deals with Customer Complaints while Section 410.210 address Information to Customers.

Meanwhile, numerous other Codes contain additional rules that retail electric suppliers must follow. For example, existing Codes are already devoted to marketing aspects of retail electric supplier marketing practices. For example, Code 453 provides Internet Enrollment Rules that provide Letter of Agency requirements. This Code section also provides Additional Requirements for Electronic LOA, which includes the 3-day rescission period for Internet Enrollments. Similarly, Code 451 deals with the Certification of ARES as well as Procedures for Reporting and Continuing Compliance with Certification Requirements. Similarly, Code 454 deals with the Licensure of Retail Electric Agents, Brokers and Consultants (“ABC”). This Code, among other things, presents ABC Code of Conduct requirements (454.90), Customer Records Information (454.110), Complaint Procedures (454.130), and Commission Oversight rules (454.140).

State and federal laws relating to the marketing of retail electricity should also be compatible with proposed rules. For example, the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505) should be consistent with proposed DFNR. Are the proposed Telephone Solicitation rules identical and/or compatible with the Telephone Solicitations Act, and, if identical, they would apply without incorporation in proposed rule. Similarly, how does Section 2N of the Consumer Fraud and Deceptive Business Act (which deals with non-English Language transactions) interplay with proposed rule?

The DFNR also proposes environmental advertising rules that should be compatible with rules established by the Federal Trade Commission's environmental marketing rules.

BlueStar is concerned that sufficient time has not been devoted to the evaluation of existing rules to determine whether an existing rule already exists, or worse yet, may conflict with the proposed rule without an explanation as to why the adopted rule is no longer valid. The Code references identified above are not an exhaustive list but rather illustrations of the type of review that must take place in this rulemaking. BlueStar appreciates other aspects of Part 410 may become part of the proposed rulemaking. However, as identified above, several codes already address applicable rules for retail electric suppliers and therefore simply putting the DFNR into a new code does not solve the problem. The recommendation to house the DFNR in a separate code was a new proposal aired at the last workshop, and as such, has not received adequate attention. Several codes should be evaluated to determine whether the new rule is an amendment to an existing code, a new rule or a changed rule and the consequences and/or advantages associated with housing the proposed rule in a new or existing code. This evaluation must occur sooner rather than later.

### **Questions Concerning Commission Legal Authority**

The first step in developing or refining appropriate retail electric measures is to clarify the scope and applicability of the proposed administrative rules in light of existing statutory authority. BlueStar echoes ComEd and other RESs, Staff's June 2009 report to the Commission, General Assembly and Governor, as well as the comments reflected in the Commission's recent UCB/POR Order (at page 47) that question the Commission's

authority to promulgate many of the rules contained in the DFNR. BlueStar reiterates its recommendation to assess the bounds of the Commission's authority as it relates to specific proposals in the DFNR so that further time and resources are not needlessly wasted.